

AMENDED IN SENATE JUNE 14, 2006

AMENDED IN ASSEMBLY APRIL 20, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2189

Introduced by Assembly Member Blakeslee

February 22, 2006

An act to ~~amend Section 399.12 of~~ *add Section 399.12.5 to the* Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2189, as amended, Blakeslee. Energy: renewable energy resources.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). The renewables portfolio standard requires each electrical corporation to

increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year over its baseline amount so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017. Pursuant to the existing definition of an “eligible renewable energy resource,” the electricity generated by a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of January 1, 2003, is eligible only for purposes of establishing the baseline of renewable energy resources procured by the electrical corporation and not for purposes of meeting the renewables portfolio standard.

~~This bill would make the incremental amount of electricity generated by an existing small hydroelectric generation facility resulting from efficiency improvements at the facility undertaken after January 1, 2003, eligible to meet the renewables portfolio standard. The bill would provide that a small hydroelectric generation facility that is an eligible renewable energy resource retains eligibility if efficiency improvements at the facility undertaken after January 1, 2003, cause the generating capacity of the facility to exceed 30 megawatts, and the facility does not require a new or increased appropriation or diversion of water, as defined. The bill would provide that the incremental increase in the amount of electricity generated from an existing hydroelectric generation facility that has received a water quality certification or exemption from the State Water Resources Control Board within the previous 15 years, regardless of size, that results from efficiency improvements for which there is no new or increased appropriation or diversion of water, is electricity from an “eligible renewable energy resource.” from a watercourse. The bill would provide that an existing conduit hydroelectric facility, as defined by a specified federal law, of 30 megawatts or less is eligible for purposes of establishing a retail seller’s baseline quantity of eligible renewable energy resources and that a new conduit hydroelectric facility of 30 megawatts or less is an “eligible renewable energy resource” if it does not require a new or increased appropriation or diversion of water pursuant to a specified law. The bill would make other technical, nonsubstantive changes from a watercourse.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 399.12.5 is added to the Public Utilities*
2 *Code, immediately following Section 399.12, to read:*

3 399.12.5. (a) *Notwithstanding Section 399.12, a small*
4 *hydroelectric generation facility that satisfies the criteria for an*
5 *eligible renewable energy resource pursuant to Section 399.12*
6 *shall not lose its eligibility if efficiency improvements undertaken*
7 *after January 1, 2003, cause the generating capacity of the*
8 *facility to exceed 30 megawatts, and the facility does not require*
9 *a new or increased appropriation or diversion of water from a*
10 *watercourse to increase its generating capacity. The entire*
11 *generating capacity of the facility shall be eligible.*

12 (b) *Notwithstanding Section 399.12, an existing conduit*
13 *hydroelectric facility as defined by Section 823a of Title 16 of the*
14 *United States Code, of 30 megawatts or less, shall be eligible for*
15 *the purposes of establishing a retail seller's baseline quantity of*
16 *eligible renewable energy resources.*

17 (c) *Notwithstanding Section 399.12, a new conduit*
18 *hydroelectric facility as defined by Section 823a of Title 16 of the*
19 *United States Code, of 30 megawatts or less, shall be an eligible*
20 *renewable energy resource if it does not require a new or*
21 *increased appropriation or diversion of water from a*
22 *watercourse.*

23 ~~SECTION 1. Section 399.12 of the Public Utilities Code is~~
24 ~~amended to read:~~

25 ~~399.12. For purposes of this article, the following terms have~~
26 ~~the following meanings:~~

27 ~~(a) "Eligible renewable energy resource" means an electric~~
28 ~~generating facility that meets the definition of "in-state~~
29 ~~renewable electricity generation facility" in Section 25741 of the~~
30 ~~Public Resources Code, subject to the following conditions or~~
31 ~~exceptions:~~

32 ~~(1) A geothermal generation facility originally commencing~~
33 ~~operation prior to September 26, 1996, shall be eligible for~~
34 ~~purposes of adjusting a retail seller's baseline quantity of eligible~~
35 ~~renewable energy resources except for electricity certified as~~
36 ~~incremental geothermal production by the Energy Commission,~~
37 ~~if the incremental electricity was not sold to an electrical~~
38 ~~corporation under contract entered into prior to September 26,~~

1 1996. For each facility seeking certification, the Energy
2 Commission shall determine historical production trends and
3 establish criteria for measuring incremental geothermal
4 production that recognizes the declining geothermal output of
5 existing steamfields and the contribution of capital investments
6 in the facility or wellfield.

7 (2) (A) A small hydroelectric generation facility of 30
8 megawatts or less generating capacity that is procured or owned
9 by a retail seller as of January 1, 2003, shall be eligible for
10 purposes of generating electricity that contributes to the baseline
11 of the retail seller pursuant to this article. A small hydroelectric
12 generation facility that is an eligible renewable energy resource
13 shall retain eligibility if efficiency improvements undertaken
14 after January 1, 2003, cause the generating capacity of the
15 facility to exceed 30 megawatts, and the facility does not require
16 a new or increased appropriation or diversion of water under Part
17 2 (commencing with Section 1200) of Division 2 of the Water
18 Code.

19 (B) A new hydroelectric facility is not an eligible renewable
20 energy resource if it will require a new or increased appropriation
21 or diversion of water under Part 2 (commencing with Section
22 1200) of Division 2 of the Water Code.

23 (C) The incremental increase in the amount of electricity
24 generated from an existing hydroelectric generation facility,
25 regardless of size, is electricity from an “eligible renewable
26 energy resource” and shall be eligible for purposes of meeting
27 the procurement requirements of this article, if both of the
28 following are true:

29 (i) The incremental increase is the result of efficiency
30 improvements for which there is no new or increased diversion
31 of water under Part 2 (commencing with Section 1200) of
32 Division 2 of the Water Code.

33 (ii) The hydroelectric generation facility has received a water
34 quality certification or exemption from the State Water
35 Resources Control Board within the previous 15 years.

36 (D) Notwithstanding subparagraph (A), an existing conduit
37 hydroelectric facility of 30 megawatts or less, as defined by
38 Section 823a of Title 16 of the United States Code, shall be
39 eligible for the purposes of establishing a retail seller’s baseline
40 quantity of eligible renewable energy resources. A new conduit

1 hydroelectric facility of 30 megawatts or less, as defined by
2 Section 823a of Title 16 of the United States Code, shall be an
3 eligible renewable energy resource if it does not require a new or
4 increased appropriation or diversion of water under Part 2
5 (commencing with Section 1200) of Division 2 of the Water
6 Code.

7 (3) A facility engaged in the combustion of municipal solid
8 waste shall not be considered an eligible renewable resource
9 unless it is located in Stanislaus County and was operational
10 prior to September 26, 1996. Electricity generated by a facility
11 meeting these requirements shall be eligible only for the purpose
12 of adjusting a retail seller's baseline quantity of eligible
13 renewable energy resources.

14 (b) "Energy Commission" means the State Energy Resources
15 Conservation and Development Commission.

16 (c) "New or increased appropriation or diversion of water
17 under Part 2 (commencing with Section 1200) of Division 2 of
18 the Water Code" means a change in the streamflow regime that
19 requires a new application pursuant to Sections 730 and 799 of
20 Title 23 of the California Code of Regulations.

21 (d) "Retail seller" means an entity engaged in the retail sale of
22 electricity to end-use customers, including any of the following:

23 (1) An electrical corporation, as defined in Section 218.

24 (2) A community choice aggregator. The commission shall
25 institute a rulemaking to determine the manner in which a
26 community choice aggregator will participate in the renewables
27 portfolio standard subject to the same terms and conditions
28 applicable to an electrical corporation.

29 (3) An electric service provider, as defined in Section 218.3
30 subject to the following conditions:

31 (A) An electric service provider shall be considered a retail
32 seller under this article for sales to any customer acquiring
33 service after January 1, 2003.

34 (B) An electric service provider shall be considered a retail
35 seller under this article for sales to all its customers beginning on
36 the earlier of January 1, 2006, or the date on which a contract
37 between an electric service provider and a retail customer
38 expires. Nothing in this subdivision may require an electric
39 service provider to disclose the terms of the contract to the
40 commission.

1 ~~(C) The commission shall institute a rulemaking to determine~~
2 ~~the manner in which electric service providers will participate in~~
3 ~~the renewables portfolio standard program. The electric service~~
4 ~~provider shall be subject to the same terms and conditions~~
5 ~~applicable to an electrical corporation pursuant to this article.~~
6 ~~Nothing in this paragraph shall impair a contract entered into~~
7 ~~between an electric service provider and a retail customer prior to~~
8 ~~the suspension of direct access by the commission pursuant to~~
9 ~~Section 80110 of the Water Code.~~

10 ~~(4) “Retail seller” does not include any of the following:~~

11 ~~(A) A corporation or person employing cogeneration~~
12 ~~technology or producing electricity consistent with subdivision~~
13 ~~(b) of Section 218.~~

14 ~~(B) The Department of Water Resources acting in its capacity~~
15 ~~pursuant to Division 27 (commencing with Section 80000) of the~~
16 ~~Water Code.~~

17 ~~(C) A local publicly owned electric utility as defined in~~
18 ~~subdivision (d) of Section 9604.~~

19 ~~(e) “Renewables portfolio standard” means the specified~~
20 ~~percentage of electricity generated by eligible renewable energy~~
21 ~~resources that a retail seller is required to procure pursuant to this~~
22 ~~article.~~